



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1995

Mr. Robert E. Hager  
Nichols, Jackson, Dillard, Hager  
& Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR95-1573

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37370.

The City of Lancaster (the "city") received a request for information concerning a certain internal affairs investigation.<sup>1</sup> The city contends that the requested information is excepted from required public disclosure under section 552.108 of the Government Code.

Section 552.108 provides that:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].<sup>2</sup>

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<sup>1</sup>You state that the city does not have a file or investigation regarding Officers Wheatley and Hall. Government Code chapter 552 applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 572 (1990), 558 (1990), 555 (1990), 534 (1989), 483 (1987), 430 (1985).

<sup>2</sup>Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 7, 1995 Tex. Sess. Law Serv. 5127, 5131.

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information which relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983).

You state that although the internal affairs investigation has been completed by the city and discipline administered, the Federal Bureau of Investigation is currently investigating this matter. Accordingly, you may withhold the requested information under section 552.108 of the Government Code. *See also* Open Records Decision No. 340 (1982) (where there is ongoing federal investigation, information related to it may be withheld by district attorney, even though state investigation has been discontinued).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Guajardo".

Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/LBC/rho

Ref: ID# 37370

Enclosures: Submitted documents

cc: Mr. Tim Speaks  
4141 Portwood  
Lancaster, Texas 75146  
(w/o enclosures)